

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,) CASE NUMBER
) 2:11-CR-10(1)
)
) PLAINTIFF,)
)
) VS.) COLUMBUS, OHIO
) SEPTEMBER 14, 2011
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)
) SEAN MURPHY,)
)
)
) DEFENDANT.)
)
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TRANSCRIPT OF PRETRIAL CONFERENCE
BEFORE THE HONORABLE GEORGE C. SMITH
UNITED STATES DISTRICT JUDGE

APPEARANCES OF COUNSEL:

FOR THE UNITED STATES: SALVADOR DOMINGUEZ, AUSA

FOR THE DEFENDANT: DAVID GRAEFF, ESQUIRE

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Wednesday Afternoon Session,
September 14, 2011.

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COURTROOM DEPUTY CLERK: The Court calls Case Number
2:11-cr-10(1), the United States of America v. Sean Murphy.

THE COURT: We are here on defendant's motion for an
initial pretrial conference, and there are numerous pretrial
issues involved in this case, as you know. Several have
already been addressed by this Court's orders.

I want to say here at the outset that this is not a
conference to reach a plea agreement or a resolution of the
case. The Court should not and will not participate in such a
conference for that purpose. However, following our discussion
here, everyone will be available without the Court's presence
to do that.

Mr. Graeff?

MR. GRAEFF: Thank you, Your Honor. First of all, I
want to thank the Court for allowing me to have this initial
pretrial conference. There is one scheduled for next month,
but because of the details that have emerged since I was last
asked to help Mr. Murphy, I thought it would be best to have
just a general discussion as to what is occurring and some of
the problems that Mr. Murphy and I are encountering.

There are, basically, four points that we are having
some concern over. The first -- I will just list the four

1 points first and then get back and detail them in sufficient
2 detail. The first one involves a young man by the name of
3 David Nassor, N-A-S-S-O-R, and he is not named in the
4 indictment, but from what I have seen in discovery and from
5 what Mr. Dominguez has discussed with me, he appears to be an
6 individual that is involved -- at least peripherally -- in this
7 case.

8 I know that Mr. Dominguez does not have the statutory
9 obligation to tell me if he is going to be a witness in this
10 case, but one of the purposes of this pretrial discussion is if
11 he is not going to be a witness, then Mr. Murphy and I want the
12 Court's permission to actually order him to be, minimally, a
13 Court's witness for us. As I understand it, he is
14 incarcerated.

15 THE COURT: To be what, Mr. Graeff?

16 MR. GRAEFF: Pardon me?

17 THE COURT: I didn't catch what your last sentence
18 was.

19 MR. GRAEFF: As I understand it, Mr. Nassor is
20 incarcerated.

21 The second part of the Nassor issue is that on
22 August 8th of several years ago, he sustained a serious
23 accident, resulting in significant head injuries. If this
24 indeed is true, then, obviously, it will affect this young
25 man's credibility. And for that reason, we filed a pretrial

1 motion to request his medical records from the hospitals that
2 we have located. That was responded by Mr. Dominguez by saying
3 that he is not under the discovery rules obligated to give us
4 that.

5 The second major issue are letters in discovery, the
6 primary ones we received from Mr. Dominguez on August 29th of
7 this year. They are a series of letters authored by my client,
8 and they have been sent to various law enforcement officials
9 and so forth. Most of them focus on negotiations under
10 Evidence Rule 410, which deals with, again, plea negotiations,
11 and as a result are inadmissible in a court of law. That is
12 the second major issue.

13 The third issue is kind of an issue that Mr. Murphy
14 and I have spent a number of hours discussing and that has to
15 do with what we called the burglary guidelines. As I
16 understand it, although I am not privy to the Presentence
17 Report of one of the codefendants, Mr. Morgan, we believe that
18 the guidelines that were used in Mr. Morgan's PSR were what we
19 call actual loss guidelines.

20 We believe that the proper criteria to use for this
21 particular case are the burglary guidelines under Section
22 2B2.1. And I'll discuss that later on, but I have found a
23 Sixth Circuit case which is right on point.

24 The last issue, and just as important, has to do with
25 Counts 2 and 3 of the indictment. They, basically, involve the

1 same conduct, Your Honor, except in Count 2, they are saying
2 that Mr. Murphy caused another individual to travel in
3 interstate commerce with the intent to commit an unlawful act;
4 namely, the theft of money. The third count deals with the
5 identical set of conduct except they have included the other
6 codefendants in the series of events.

7 We filed a motion to dismiss those counts under rule
8 12(b)(6) because we believe that they don't state a federal
9 offense. Mr. Dominguez responded by citing a Seventh Circuit
10 case, United States v. Baker, and we have read the case, and we
11 believe that -- and as an officer of this Court, I believe
12 that -- we are not creating excessive paper by filing a motion
13 to reconsider Counts 2 and 3.

14 Mr. Murphy has an unusual handle on this. He has the
15 ability to articulate this, quite frankly, better than me. And
16 so, towards the end of my discussion, with the Court's
17 permission, after I give my spiel to set the table, I would
18 like, again, with the Court's deference, to ask Mr. Murphy to
19 articulate it in a better fashion than I can.

20 But I would like to get back to count -- the first
21 point on the agenda, which is this David Nassor issue. And if
22 Mr. Dominguez could speak to that and let us know, if indeed,
23 he is going to be a witness here, that would avoid us asking
24 you to file a writ of habeas corpus to get him back here in
25 time for the October 17th trial.

1 MR. DOMINGUEZ: Your Honor, Mr. Nassor will be
2 available for trial.

3 MR. GRAEFF: So, I take it from your response that he
4 will be here?

5 MR. DOMINGUEZ: That is correct.

6 MR. GRAEFF: Thank you. The other part of the issue,
7 Your Honor, is the medical records that resulted in his
8 hospitalization in an east coast hospital where he sustained
9 his head injury. Mr. Dominguez is correct in that he does not
10 have to give me those records, but under Criminal Rule 17,
11 which is our subpoena rule, under a subheading of it, if I
12 request that of you and state the reasons, then you have the
13 obligation -- I'm sorry -- you have the discretion in ordering
14 that hospital or series of hospitals to give those records to
15 me and Mr. Murphy.

16 The reason behind it, Your Honor, is because of the
17 privacy act and because of obvious personal data that would be
18 shown. But, again, I would state as an officer of this court,
19 if Mr. Murphy(sic, Mr. Nassor) did sustain a head injury --
20 obviously, sometimes, I feel like I have sustained a head
21 injury sometimes when I discuss things -- but if
22 Mr. Murphy(sic, Mr. Nassor) has sustained a head injury -- I
23 think it is proper that in the interests of this court
24 proceeding and trial, that we be given the medical records.

25 So, we will file a motion with respect to that, Your

1 Honor.

2 THE COURT: All right.

3 MR. GRAEFF: Now, the letters that we obtained
4 primarily from the August 29th batch of discovery, as I
5 mentioned at the start of my spiel, are authored mostly by
6 Mr. Murphy, and they are a series of letters that --

7 THE COURT: Why don't we do this, Mr. Graeff, let's
8 give Mr. Dominguez an opportunity to respond as you present the
9 issues. Is that all right with you, Mr. Dominguez?

10 MR. DOMINGUEZ: I am fine. Whatever the Court would
11 like to do.

12 THE COURT: Would you rather that we listen to all of
13 this and then you start in?

14 MR. DOMINGUEZ: Your Honor, I am prepared either way.
15 I have already responded to his first issue with respect to
16 Mr. Nassor's availability. I have represented to Mr. Graeff
17 and now Mr. Murphy and this Court that he will be here for this
18 trial.

19 Secondly, I want the record to be clear because --
20 and I know that Mr. Graeff did not mean this -- he said the
21 government is not obligated to give those records. I don't
22 want the record to suggest -- I do not have those records at
23 all. So, I want that to be clear on this record.

24 MR. GRAEFF: I agree.

25 THE COURT: Do you know what is in those records?

1 MR. DOMINGUEZ: I have no idea, Judge. Candidly,
2 Mr. Murphy may know better than any of us because Mr. Nassor
3 and he are close, and obviously, he knew the time frame within
4 which he had this injury. I do not object if the Court were to
5 issue an order. I am not trying to prevent Mr. Graeff or
6 Mr. Murphy from having access to these records.

7 Obviously, what Mr. Nassor did at Mr. Murphy's behest
8 allegedly occurred sometime after Mr. Nassor suffered this head
9 injury. So, the nature of my response was that we do not have
10 access to those records, nor do we have through HIPAA the
11 ability to actually obtain those records without Mr. Nassor's
12 consent.

13 With respect to the letters authored by Mr. Murphy, I
14 don't know if Mr. Graeff was finished with his statement
15 regarding that?

16 MR. GRAEFF: No.

17 MR. DOMINGUEZ: Okay.

18 THE COURT: Mr. Graeff, before we leave this subject,
19 unless you are going to be commenting on the Nassor matter, do
20 you or your client know whether Mr. Nassor will give his
21 consent?

22 MR. GRAEFF: Mr. Murphy, do you want to stand up and
23 speak to what you just told me?

24 THE DEFENDANT: Your Honor, I believe that if the
25 Court subpoenas the records and holds them under seal, when

1 Mr. Nassor gets here prior to trial, I believe the Court can
2 question him, and I believe he'll probably release them because
3 we did the same thing in the Massachusetts case. We subpoenaed
4 his records, they were held under seal, and then when
5 Mr. Nassor was going to become available, he was going to give
6 us permission to get access to them.

7 THE COURT: Okay. Thank you.

8 MR. DOMINGUEZ: May I have a moment, Your Honor?

9 THE COURT: Yes.

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11 (There was a discussion between counsel.)

12 - - -

13 MR. GRAEFF: Your Honor, we can resolve that.

14 THE COURT: Okay.

15 MR. GRAEFF: I'd like to get back to the letters for
16 a couple of seconds, so that Mr. Dominguez can respond.

17 We filed a motion in limine, and after I filed it,
18 Mr. Dominguez called me and stated with respect to the letters,
19 which are Part 3 and Part 4 of the motion in limine, he
20 suggested that we get together and try to figure out which
21 letters he is not going to introduce and which letters he wants
22 to introduce, if I am making myself clear? There is a whole
23 bunch of letters. So, we can do that.

24 THE COURT: Well, excuse me. Are these letters that
25 preceded the incident?

1 MR. GRAEFF: No, sir. Most of them -- the incident
2 occurred on January 17th of 2009, and the lion's share of these
3 letters have been authored afterwards.

4 THE COURT: Okay.

5 MR. GRAEFF: But I want to -- what we are trying to
6 do is cut down on the Court's time because, as you well know in
7 a motion in limine, it is a conditional motion. And when
8 Mr. Dominguez is going to introduce a letter, if he does, then
9 I have got to get up and object, and we will have a sidebar
10 conference. So, what we are trying to do is limit that, so
11 that we aren't here until Christmas during this trial.

12 So, what I planned to do after this pretrial
13 conference is, hopefully, get with Mr. Dominguez and try to
14 work it out, but I can almost guarantee you that there will be
15 some that we will not be agreeable upon. So, what we will try
16 to do is accommodate the Court by indicating to your court
17 personnel the letters that we are not going to agree upon, if I
18 am making myself clear?

19 THE COURT: All right.

20 MR. GRAEFF: Okay. Go ahead.

21 MR. DOMINGUEZ: Your Honor, and I want to make clear
22 to the Court that is the reason why the government has not yet
23 responded to Mr. Graeff on behalf of Mr. Murphy's motion in
24 limine. One prong of his request to hold those matters in
25 limine was the assertion that those letters are somehow in

1 furtherance of plea negotiations or a proffer. And second, it
2 was rather broad, that some of the letters were otherwise
3 prejudicial.

4 And as I told Mr. Graeff, that's a pretty broad term,
5 so why don't we sit down and figure out which ones I actually
6 want to use, and then we can bring those before the Court, if
7 we can't reach some type of an agreement as to those letters.

8 THE COURT: Thank you.

9 MR. GRAEFF: The third point of this agenda, Your
10 Honor, deals with the burglary guidelines. Under Section
11 2B2.1. Mr. Murphy and I have had a great deal of discussion on
12 this and the point of contention -- and also Mr. Dominguez and
13 I have -- and the point of contention is that Mr. Dominguez is
14 saying that the applicable guideline is actual loss under
15 another guideline. What we have been saying is the applicable
16 guideline is Section 2B2.1.

17 I found a case from the Sixth Circuit, and it is
18 called the United States v. Couch, C-O-U-C-H, 65 F.3d 542,
19 where in that case, briefly, Your Honor, the district court
20 judge in Tennessee applied the burglary guidelines involving a
21 theft, involving a series of thefts.

22 Real quickly, Mr. Couch was involved with other
23 individuals in a Tennessee National Forest, and they were
24 stealing property from cars. The district court stated in
25 clear and unequivocal terms that the burglary guidelines

1 applied. It gets reversed by the Sixth Circuit but for other
2 reasons.

3 The point is that the Sixth Circuit has stated that
4 you have almost unbridled discretion to determine whether the
5 burglary guidelines apply or the theft guidelines apply. And
6 this case is, basically, a Hallmark case that reflects what I
7 have been trying to say.

8 This is extremely important, and it is my belief that
9 if I am given the opportunity to hold some sort of a
10 pre-determination conference with the Probation Officer, with
11 Mr. Dominguez present, that this will go a long way in
12 determining the ultimate outcome of my case.

13 I am not saying this just to puff. I am saying it
14 because I truly believe that the burglary guidelines are the
15 guidelines that should be used in this case. On January 17th
16 of 2009, the allegation here is someone broke into the Brink's
17 warehouse. It is that clear, it is a breaking and entering,
18 and the reason for the burglary guidelines to fit perfectly
19 within this series of events.

20 MR. DOMINGUEZ: Your Honor, I have not had the
21 benefit of reviewing Couch. I will review it. I strongly
22 disagree with Mr. Graeff's and Mr. Murphy's analysis in that
23 regard. And I will first point to the sentencing guidelines
24 themselves, which references 18 United States Code, 2314, which
25 is the interstate transportation of stolen property charge in

1 this case. And it refers directly to Section 2B1.1 and 2B1.5
2 under the sentencing guidelines. And as a matter of fact,
3 under the Commentary provisions, the statutory provisions cited
4 in there also reflects 18 United States Code, Sections 2312 to
5 2317.

6 The allegation of this case, Your Honor, is not the
7 mere breaking in of Brink's warehouse in Columbus, Ohio on
8 January 17th and 18th of 2009. The allegation here is
9 Mr. Murphy along with two others traveled in interstate
10 commerce, using a van line and using a sedan, to travel to
11 Pennsylvania to get tools that had previously been placed there
12 by Mr. Murphy and then go to Columbus, Ohio for the express
13 purpose of breaking into the Brink's warehouse facility on
14 Essex Road and then taking the goods, the chattel, if you will,
15 that they obtained in interstate commerce, first to
16 Pennsylvania and then to Boston, Massachusetts.

17 It is a clear case of interstate transportation of
18 stolen property, which is the allegation returned by the Grand
19 Jury in this case. Therefore, we feel strongly that Section
20 2B1.1 of the sentencing guidelines would be the applicable
21 guideline. However, that is, in fact, a sentencing issue, and
22 we would take that up, of course, if, in fact, Mr. Murphy is
23 convicted by a jury here in Columbus.

24 MR. GRAEFF: May I respond just briefly to that, Your
25 Honor? I don't want to turn this into a Sixth Circuit oral

1 argument, but first of all --

2 THE COURT: It is a rather important issue.

3 MR. GRAEFF: Pardon me?

4 THE COURT: It is a rather important issue.

5 MR. GRAEFF: It is a very important issue. And in
6 the 39 years I have been doing this kind of work, I don't think
7 I have ever asked for some sort of predetermination hearing to
8 determine whether the burglary guidelines apply or the actual
9 loss guidelines apply.

10 Agent Trombitas, who spearheaded this investigation,
11 in his discovery that I received weeks and weeks ago, stated at
12 the top right, and so did Agent Costello, an FBI agent, that a
13 burglary occurred. If Mr. Dominguez is so concerned over the
14 fact that actual loss is the applicable guideline, then he has
15 to discuss that with his own agents.

16 The next issue is the last one on the list, and that
17 is Counts 2 and 3 of the indictment. And that is what we call
18 the travel count where the individual supposedly traveled in
19 interstate commerce with the intent to commit an unlawful act,
20 in this case, the theft of money.

21 We believe that the logic that is used to get to this
22 offense is circular and what Mr. Murphy and I have called
23 "hopscotch". And with the Court's permission, I would like
24 Mr. Murphy to explain the reasons why these two offenses are
25 not federal offenses.

1 THE COURT: Well, before we do that, give me a chance
2 to read them.

3 Well, Mr. Murphy, I understand that you have a
4 comment on this?

5 THE DEFENDANT: Yes, Your Honor. In regards to the
6 1952 indictments, Your Honor, there are two of them, if you
7 listen to the government's argument in regards to why these
8 1952s apply, they are basically saying that every 2314 that's
9 ever filed has an automatic 1952 attached to it. That's what
10 they are saying.

11 THE COURT: Wait a minute. What is the 1952?

12 THE DEFENDANT: The 1952 is the interstate
13 transportation in aid of racketeering of an unlawful activity.

14 THE COURT: Okay.

15 THE DEFENDANT: That's what is at issue here, Your
16 Honor, Counts 2 and 3, the two 1952s.

17 THE COURT: Okay.

18 THE DEFENDANT: That's the first point we would like
19 to make. Under the government's argument, they are basically
20 saying that every 2314 has an automatic 1952 attached to it,
21 and I don't believe that was Congress's intent to do that.

22 And to go along with that argument, before I get to
23 the next argument, if Congress wanted 1961 to be a listed
24 offense in 1952, they would have stated that, but they didn't.
25 And under 1952, they authorize a list of crimes and 1956 and

1 1957.

2 What the government did, they went to 1956, which
3 referred to 1961, and then went down and say, now, we are doing
4 this. That's why Mr. Graeff said, you know, they are playing
5 "hopscotch". They went to 1952 first and then to 1956, which
6 refers to 1961, and therefore, we have an offense. But 1961
7 wasn't listed under 1952, and I don't believe it was Congress's
8 intent to do that.

9 And finally, Your Honor, my last argument is it is
10 duplicitous. 1952 was interstate transportation in aid of
11 racketeering, and the government is saying that the unlawful
12 activity is 2314. And even though the government named it as
13 theft of money and merchandise, 2314 is interstate
14 transportation. That's what the statute is. The government
15 just said that earlier in his argument, 2314 is interstate
16 transportation. So, the government is basically saying that it
17 is interstate transportation in aid of interstate
18 transportation. And that's duplicitous. I just don't see the
19 logic in their argument.

20 THE COURT: Okay. I would assume -- unless you got
21 it off the top of your head -- the commentary on that or the
22 argument on that, that's the subject of, you know, a future
23 brief.

24 MR. DOMINGUEZ: If you would like, Your Honor, but we
25 feel comfortable with both counts as charged. If you look 18

1 United States Code, Section 1952, it does specify unlawful
2 activity, and then it cross-references 1956 and 1957, the money
3 laundering statutes, which actually indicate what is specified
4 unlawful activity and what constitutes a racketeering
5 enterprise, and then it cross-references 1961.

6 In addition to the interstate transportation of
7 stolen property as being a specified unlawful activity, it
8 lists a whole litany of crimes that --

9 THE COURT: It spells it out?

10 MR. DOMINGUEZ: Spells it out. Even prostitution,
11 which in and of itself is not a federal offense, but under
12 these guidelines, under these statutes, the interstate
13 transportation or the interstate travel in order to further
14 that activity. So, Congress is actually capturing the
15 traveling in interstate commerce in order to further this
16 activity. In other words, if they not had achieved their goal,
17 if they could not make the heist, the traveling in interstate
18 commerce to commit that crime still would be punishable under
19 18 United States Code, Section 1952. That's what's being
20 penalized by Congress by way of those statutes.

21 And we are comfortable with the Court's ruling with
22 respect to Counts 2 and 3, and we are comfortable arguing that
23 before the Sixth Circuit, Your Honor.

24 THE COURT: All right. That, of course, has been
25 ruled on by the Court, but if there are further arguments on

1 that, you may certainly submit them, Mr. Graeff.

2 We have other issues to discuss that we need to get
3 to. Is there anything else?

4 MR. GRAEFF: No, sir.

5 THE COURT: That's your four?

6 MR. GRAEFF: Not at the present, no, sir.

7 THE COURT: Okay. This case is set for trial Monday,
8 October 17th with the final pretrial scheduled for Wednesday,
9 October 5th, and voir dire on Wednesday, October 12th. Is
10 there any problem with any of that?

11 MR. GRAEFF: No, sir.

12 THE COURT: Mr. Dominguez?

13 MR. DOMINGUEZ: I may have another commitment, Your
14 Honor, and if the Court is able, I would respectfully request
15 that we move the voir dire to either Thursday or Friday of that
16 week, but we can certainly be here if the Court is set on
17 October 12th.

18 MR. GRAEFF: I have no problem with moving the voir
19 dire if Mr. Dominguez has to be elsewhere.

20 THE COURT: Well, I don't have a problem either. We
21 will move it to Thursday.

22 MR. DOMINGUEZ: Thank you, Your Honor.

23 THE COURT: If we don't have time on Thursday, we
24 will move it over to Friday, if necessary. You want to change
25 that now?

1 MR. DOMINGUEZ: That would be fine with the
2 government, Your Honor.

3 MR. GRAEFF: What is the 12th?

4 MR. DOMINGUEZ: The 12th is a Wednesday. The 13th
5 is a Thursday.

6 MR. GRAEFF: Thursday, the 13th? Sure.

7 THE COURT: Now, I would like to get an idea of
8 approximately how long the trial will take. Mr. Dominguez,
9 your case?

10 MR. DOMINGUEZ: From the government's perspective,
11 Your Honor, and of course I cannot speculate how much
12 Mr. Graeff will do with respect to my case, but I can't see it
13 taking longer than a week.

14 MR. GRAEFF: We anticipate, Your Honor, four to five
15 days on a defense.

16 THE COURT: On the defense?

17 MR. GRAEFF: Yes, sir.

18 THE COURT: Not counting your cross-examination and
19 all of that? Okay.

20 MR. GRAEFF: This could easily be a two-week trial,
21 and it might spill into the third week.

22 THE COURT: Well, let me urge you, and you are
23 already doing this cooperatively, urge you that we use the
24 motion in limine as much as possible in pretrial motions, as
25 much as possible even if we have to have more hearings in here

1 prior to that time because I don't like the jury -- anymore
2 than you do -- it wouldn't be good psychology on behalf of any
3 defendant either to have them be sitting out there two to three
4 hours every day while we go over a last minute motion for
5 something that could have been brought up before.

6 MR. GRAEFF: Your Honor, 50 percent of my day is
7 being spent on this case. You had the good graces to allow me
8 to have an investigator, Gary Phillips, who is doing a very
9 good job. Mr. Dominguez has been very prompt in responding,
10 and I will represent to you that we are doing everything
11 possible to do the right thing as far as allowing the trial to
12 proceed and not any collateral side issues.

13 THE COURT: All right. Thank you. So, to summarize
14 that, all legal issues must be raised in advance of trial by
15 written motion, and the Court will not consider issues raised
16 during the trial unless counsel shows that the matter could not
17 have been raised sooner. And that includes any issues that may
18 have been touched on here today. If the defendant does not
19 believe any issue was adequately addressed, please raise that
20 issue in a written motion and be sure to include the legal
21 support for any such argument prior to the trial.

22 Mr. Murphy is nodding "yes".

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Be thinking of what types of exhibits
25 that you will be presenting, such as a video that would require

1 equipment.

2 MR. GRAEFF: We have a large exhibit list, and I am
3 in the process of obtaining an easel, which will be used to
4 assist us in our defense.

5 THE COURT: An easel?

6 MR. GRAEFF: An easel like in art, a support type of
7 thing?

8 THE DEFENDANT: Your Honor, an easel is one of them
9 three-legged things where you put the thing up, or you can fold
10 it.

11 THE COURT: Oh, an easel. We have one of those.

12 MR. GRAEFF: What did I say? A weasel?

13 COURTROOM DEPUTY CLERK: Mr. Graeff, the Court has
14 that.

15 THE COURT: We have that around here.

16 MR. GRAEFF: Oh, really? Okay. Super.

17 THE COURT: Yeah, this is important since this is a
18 21st Century courtroom here. If you plan to use exhibits,
19 you will need to coordinate some training on our electronic
20 courtroom with Lisa Wright and John Wright. In other words,
21 pre-train on that.

22 MR. GRAEFF: Your Honor, I have trouble putting gas
23 in the car.

24 MR. DOMINGUEZ: We'll do it together.

25 THE COURT: I know your VCR is always on 12 o'clock.

1 COURTROOM DEPUTY CLERK: We will coordinate that,
2 Your Honor.

3 THE COURT: And, of course, this can go without
4 saying, but a stipulation can be reached between the parties.

5 And are there any additional issues that you
6 anticipate that we will need to discuss?

7 MR. GRAEFF: There is one slight issue, and it is
8 basically that Mr. Dominguez -- that there are certain videos
9 that might possibly be introduced during the course of the
10 trial; is that correct?

11 MR. DOMINGUEZ: Yes.

12 MR. GRAEFF: So, they will probably be a graphic part
13 of the jury trial. Hopefully, you know how to introduce them?

14 MR. DOMINGUEZ: Yeah, we will be fine.

15 THE COURT: Well, as you can see, we have 46 video
16 screens here in the courtroom, as well as my old regular
17 screen.

18 MR. GRAEFF: There aren't really 46 videos, are
19 there?

20 MR. DOMINGUEZ: He means the screens. The screens,
21 it is all good.

22 MR. GRAEFF: Your Honor, I would like to thank you
23 for your time today.

24 MR. DOMINGUEZ: May I address one matter? I will
25 move orally at this time to know if there is any alibi defense

1 from the defense?

2 MR. GRAEFF: You have to do that by written motion,
3 as I understand the rule.

4 MR. DOMINGUEZ: We can do that as well, but I wanted
5 to put it on the record.

6 MR. GRAEFF: You better do it by a written statement.

7 MR. DOMINGUEZ: Thank you, Your Honor.

8 THE COURT: Okay. Stephanie has the predetermination
9 material, and you may remain in the courtroom. You may need a
10 break. Mr. Murphy, do you need a break?

11 THE DEFENDANT: No, Your Honor, I am fine.

12 THE COURT: Mr. Graeff?

13 MR. GRAEFF: No, sir.

14 MR. DOMINGUEZ: Thank you, Your Honor.

15 COURTROOM DEPUTY CLERK: Ladies and gentlemen, please
16 rise. This hearing is adjourned, and court stands adjourned.

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C E R T I F I C A T E

United States of America

Southern District of Ohio

I, Georgina L. Wells, Official Court Reporter of the United States District Court for the Southern District of Ohio, do hereby certify that the foregoing 23 pages constitute a true and correct transcription of my stenographic notes taken of the said requested proceedings, held in the City of Columbus, Ohio, in the matter therein stated on the 14th day of September, 2011.

In testimony whereof, I hereunto set my hand on the 19th day of September, 2011.

/sa/Georgina L. Wells

Georgina L. Wells, RMR
Official Court Reporter
Southern District of Ohio